



Montana Department of LABOR & INDUSTRY

1
2 Division: Workforce Services Division
3 Category: WIOA
4 Effective Date: 03/21/2018
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6 Policy No.: 04-18

7 Monitoring, Audits, Performance and 8 Sanctions Policy

9 **Background:** Monitoring and evaluation is an integral part of the monitoring responsibilities required by
10 law. Monitoring and evaluation identify areas of strength and weakness in program operation with the intent of
11 improving program performance. Monitoring is essential to ensure compliance with appropriate laws,
12 regulations, plans, provider agreements, policies and procedures. Monitoring provides the opportunity to
13 strengthen or improve programs and systems to promote continuous improvement. The Programs Monitoring
14 Unit may conduct supplemental monitoring reviews of providers to determine the extent to which the provider is
15 assisting in the development and operation of the One Stop System. The Programs Monitoring Unit may
16 recommend that a service provider take a course of corrective action for any deficiencies found in the
17 provider's operations that relate to the One Stop System. Additional onsite reviews may be conducted to
18 investigate allegations of mismanagement or to clarify unusual findings. An additional review may or may not
19 result in corrective action. Additional reviews could lead to the implementation of an investigation or known or
20 suspected incidents of fraud, program abuse, or criminal conduct.

21 **Scope:** This policy applies to all service providers operating WIOA programs, WIOA program managers, WIOA
22 fiscal officers and the WIOA monitors. This policy is effective March 21, 2018.

23 Policy:

24 Monitoring Definitions:

- 25 • **Commendation:** Given when the monitor finds consistently good practices the provider is doing.
- 26 • **Compliance Findings:** When the monitor finds a practice that is in violation of law, rule, or policy. Any
27 time documentation is missing for enrollment, eligibility, MIS standards, etc. this would be a compliance
28 finding. Deficiencies regarding overall program and/or case management policy would be a compliance
29 finding. The Compliance Finding would be immediately followed by Action Required. The Compliance
30 Finding will reference the law, regulation, or policy that is not being followed.
- 31 • **Area of Concern:** When the monitor finds a practice that might lead to non-compliance of law, rule, or
32 policy. This would be used for a questionable practice but does not meet the threshold of compliance
33 finding. The monitor will suggest technical assistance or opportunity for improvement. Depending on the
34 severity of the deficiency, the provider may or may not respond to these on the report. The Area of
35 Concern will be followed by a Recommendation.

- 1 • **Questioned Cost:** Used when monitors find unallowable purchases and/or incorrect or missing
2 documentation for activities, services or payments made with program dollars. The payment is
3 questioned until the provider has a chance to respond and resolve the discrepancy.
- 4 • **Disallowed Cost:** Used when the provider cannot provide the documentation to support a questioned
5 cost that is a clear violation of policy, rule or law. The provider has the responsibility to reimburse the
6 program with non-federal funds. Providers can collect repayment from the client, if applicable, but it is
7 at their discretion and the responsibility lies with the provider to repay the cost within the
8 report/response deadline.

9

10 **Monitoring Process:**

- 11 • The Programs Monitoring Unit conducts program, data and fiscal monitoring and evaluation of service
12 providers. Monitoring will be conducted to review previous program year(s) since the last monitoring.
- 13 • Monitoring and/or limited scope reviews may consist of interviews with appropriate staff and reviews of
14 policies, procedures, accounting reports, source documents, and other records as considered necessary
15 pertaining to any or all of the WIOA Title I activities including:
 - 16 ○ Fiscal,
 - 17 ○ Adult,
 - 18 ○ Youth,
 - 19 ○ Dislocated Worker,
 - 20 ○ National Dislocated Worker Grant (NDWG),
 - 21 ○ Management Information System (MIS),
 - 22 ○ Eligible Training Provider List (ETPL),
 - 23 ○ The One Stop System including One Stop Operators, Centers and Service Providers, and
 - 24 ○ Equal Opportunity (EO).
- 25 • Members or representatives of entities such as One Stop Operators, State Workforce Innovation Board
26 (SWIB), or U.S. Department of Labor (USDOL) may accompany onsite monitors.
- 27 • Regular monitoring of WIOA activities and providers of basic individualized career services is conducted
28 to ensure compliance with WIOA requirements including:
 - 29 ○ Compliance with the uniform administrative requirements described in WIOA Title I Section 181
30 and USDOL uniform administrative requirements in 2 CFR 200, including the appropriate
31 administrative requirements and applicable cost principles at WIOA Reg. Subpart B for all
32 entities receiving WIOA Title IB funds;
 - 33 ○ Compliance with applicable state laws and regulations;
 - 34 ○ Determining that expenditures have been made against the cost categories and within the cost
35 limitations specified in the Act and Regulation;
 - 36 ○ Compliance with the nondiscrimination, disability and equal opportunity requirements of WIOA
37 section 188 and 29 CFR part 38;
 - 38 ○ Compliance with data collection and reporting system policies and procedures; and
 - 39 ○ Determining whether there is compliance with other provisions of the Act and the WIOA
40 regulations and other applicable laws and regulations.
- 41 • If, as a result of financial and compliance audits or otherwise, the Programs Monitoring Unit has
42 determined that noncompliance with the uniform administrative requirements found at 2 CFR 200, 29
43 CFR part 95 or part 97, as appropriate, the requirements referred to in WIOA Sections 181 and 184, 29
44 CFR Part 37, or any other substantial violation of WIOA Title I, the Department of Labor and Industry,
45 Workforce Services Division will require corrective action to secure prompt compliance.
- 46 • If, because of financial and compliance audits or otherwise, the Programs Monitoring Unit has
47 determined a violation of specific provisions of WIOA Title I, and compliance with corrective action has
48 not been taken, the SWIB and/or Department of Labor and Industry, Workforce Services Division may:
 - 49 ○ Coordinate technical assistance as necessary and appropriate;
 - 50 ○ Prohibit the use of eligible providers;

- 1 o Select an alternative entity to provide services; or
- 2 o Terminate contract with service provider.

3 Evaluation:

- 4 • Evaluation is the measurement of the effectiveness of programs in meeting objectives, program goals
- 5 and performance standards. Evaluations are intended to promote, establish, implement, and utilize
- 6 methods for continuously improving workforce activities to achieve maximum performance and
- 7 outcomes from the statewide workforce system.

8 Service Provider Performance:

- 9 • Federal performance measures are applied to the state and service providers providers; each must
- 10 strive to individually meet these Federal performance measures. Service providers are given goals at
- 11 the beginning of each program year and must meet these goals or be subject to sanctions.

12 Performance Calculations:

- 13 • Acceptable performance for each measure is calculated based on negotiated factors.

14 Program Sanctions:

- 15 • The Programs Monitoring Unit will evaluate service provider's performance as per individual
- 16 agreements. The evaluation of performance will be provided to the Program Manager. The Program
- 17 Manager will provide assistance to the service provider based on planned versus actual expenditures of
- 18 funds and fulfillment of the terms and provision and scope of services. The process will include monthly
- 19 program and fiscal desk review; regular communication with operators and providers; attendance at
- 20 training and technical assistance sessions; monthly status reports; and agreement modifications and
- 21 monitoring.
- 22 • Service providers found deficient in any of the areas will submit a corrective action plan to the Programs
- 23 Monitoring Unit. Program Managers will provide appropriate technical assistance.
- 24 • Should a service provider fail to fulfill the corrective action, and the program managers have exhausted
- 25 the viability of technical assistance as a remedy to correct the problem, the Programs Monitoring Unit
- 26 will forward the information to the appropriate committee of the SWIB.
- 27 • Sanctions may result in recommending de-obligation of funds and/or that the service provider become
- 28 ineligible for any future funding consideration.
- 29 • In cases of claims of known or suspected incidents of fraud, malfeasance, misfeasance, nonfeasance,
- 30 misapplication of funds, gross mismanagement, or other criminal activities in federally funded
- 31 programs, the Department of Labor and Industry, Workforce Services Division will report all known
- 32 information on the Federal Incident Report. In addition, the Department of Labor and Industry,
- 33 Workforce Services Division may initiate a special investigation or audit of the incident. The special
- 34 investigation or audit may include but is not limited to additional onsite monitoring and/or a financial
- 35 audit conducted by a third-party auditing firm. For the purpose of this section the following definitions
- 36 apply:
 - 37 o Fraud, Misfeasance, Nonfeasance or Malfeasance Fraud: Misfeasance, nonfeasance or
 - 38 malfeasance should be considered broadly as any alleged deliberate action that is in violation of
 - 39 federal statutes and regulations. This category includes, but is not limited to, indications of
 - 40 bribery, forgery, extortion, embezzlement, theft of client checks, kickbacks from clients,
 - 41 intentional payment to a contractor or service provider without the expectation of receiving
 - 42 services, payment to ghost enrollees, misuse of appropriated funds, and misrepresenting
 - 43 information in official reports.
 - 44 o Misapplication of funds is considered as use of funds, assets, or property not authorized or
 - 45 provided for under WIOA regulations, grants, agreements or contracts. This category includes,
 - 46 but is not limited to, nepotism, political patronage, use of clients for political activities, ineligible
 - 47 clients, conflict of interest, failure to report income from federal funds, violation of

1 agreement/contracts/grant procedures, and the use of federal funds for other than specified
2 purposes.

- 3 ○ Gross mismanagement is considered as actions or situations arising out of management
4 ineptitude or oversight, leading to major violations of WIOA processes, regulation, or
5 agreement/contract/grant provisions which could severely hamper the accomplishment of
6 program goals. These include situations that lead to waste of government resources and could
7 jeopardize future support for a project. This category includes, but is not limited to, non-
8 auditable records, unsupported costs, highly inaccurate fiscal or program reports, payroll
9 discrepancies, payroll deductions not paid to the Internal Revenue Service, and the lack of good
10 internal control procedures.
- 11 ○ Employee/client misconduct is considered as actions occurring during or outside work hours
12 that reflect negatively on USDOL, the State of Montana, or the WIOA program. Misconduct may
13 include, but is not limited to, conflict of interest involving outside employment, business, and
14 professional activities, the receipt or giving of gifts, fees, entertainment and favors, misuse of
15 Federal property, misuse of official information and such other activities as might adversely
16 affect the confidence of the public, as well as serious violations of Federal and State laws.
- 17 ● All program activities may be suspended during the time that a special investigation or audit is being
18 conducted. Following completion of the special investigation or audit, action taken may include, but is
19 not limited to:
 - 20 ○ Reinstatement;
 - 21 ○ For audits, resolution as outlined below;
 - 22 ○ Reduction or de-obligation of all or part of the funds awarded to a service provider or operator;
 - 23 ○ Termination of all or part of the operator or provider agreement with possible repayment of
24 funds; and
 - 25 ○ Civil or criminal prosecution, if warranted.

26 Debt Collection:

- 27 ● Due to monitoring or audit findings resulting in a repayment...Debts receivable must be paid within 30
28 days of establishment of the debt. Repayment of debts established will be in the form of a cash
29 payment unless negotiation between the SWIB Administrative Entity and the debtor produce some other
30 method. Cash from a non-federal source is the required method of repayment where there is misuse of
31 funds due to willful disregard of requirements of the Act, gross negligence, or failure to observe
32 accepted standards of administration. Settlement of debts on a non-cash basis will be by exception.
- 33 ● If an established debt is not paid within 30 days of the final determination or if established installment
34 payments are more than 30 days late, a letter will be sent from the SWIB Administrative Entity stating
35 that payment is due immediately. At 45 days, another letter will be sent stating the account will be sent
36 to the Attorney General's Office if not paid within 15 days. At 60 days, the account is turned over to the
37 Attorney General and the SWIB will consider whether to continue to do business with the debtor.

38 Methods of Repayment of Debt:

- 39 ● **Lump Sum:** payment in full may be made by certified check, money order, cashier's check, or bank
40 draft.
- 41 ● **Installment Payments:** cash installment repayment agreements are usually short-term duration, from
42 three to twelve months, and are limited to 36 months by the Federal Claims Collection Standards.
43 Duration is negotiated based on the size of the debt and the debtor entity's ability to pay.
- 44 ● **Adjustment in Payments:** when cash repayment in lump sum or in installments is impossible, an
45 agreement may be entered into with the debtor whereby the contract is reduced by the amount of the
46 debt repayment while the program is maintained at an undiminished cost level through nonfederal
47 contributions.
- 48 ● **Withholding:** this repayment method will involve withholding amounts owed the debtor for past services
49 or for other considerations already provided in satisfaction of the debt owed.

- 1 • **Offset:** this method involves reducing the contract up to the amount of the debt. The SWIB
2 Administrative Entity may use this option with the approval of the U.S. Secretary of Labor.
- 3 • Non-Cash methods must be negotiated with the SWIB Administrative Entity prior to being considered as
4 a method for debt recovery.
 - 5 ○ **Stand-in Costs:** this method is not actually a debt repayment, but is a way of “erasing” the debt.
6 The debtor must identify allowable non-federal costs associated with the contract but not
7 charged to the contract, and substitute those costs for the disallowed costs, thus erasing the
8 debt. These expenditures must have been reported to the SWIB Administrative Entity with the
9 quarterly financial status report or closeout package for the year the costs were incurred to be
10 considered for disallowed costs incurred during that same period. This method would require
11 negotiation and agreement with the debtor that such costs are subject to audit. Documentation
12 that will establish a clear audit trail must be maintained when such agreements are made.

13 References:

- 14 • [2 CFR 200 Uniform Administrative Requirements](#)
- 15 • [WIOA Section 181 Requirements and Restrictions](#)
- 16 • [29 CFR 37 Nondiscrimination and Equal Opportunity](#)
- 17 • [WIOA Section 188 Nondiscrimination](#)